

**REMARKS/ARGUMENTS**

Claims 1-36 are currently pending. Claims 1, and 13-25 are amended herein. Applicant acknowledges receipt of the above-identified Office Action, and respectfully traverses the Office Action in its entirety.

Applicant thanks the Examiner for suggesting language for claims 13 and 25 to overcome any potential issues with respect to rejections under 35 U.S.C. §101. Applicant has made the appropriate changes.

**REJECTIONS UNDER 35 U.S.C. §102(e)**

Claims 1, 13, and 25 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Application publication No. 2005/0044127 to Jaiswal et al. (“Jaiswal”). Applicant respectfully traverses. Applicant’s claimed invention is directed to a system, methods, and computer readable media used in a clustered, multiprocessor computing system, whereby a set of computer-readable instructions is associated with a specific cluster, and more specifically with a specific processor within the cluster. As recited in the claims, Applicant’s claimed invention facilitates selection of the appropriate processor based, at least in part, on the priority associated with the processor and the cluster of which it is a member.

Jaiswal is directed to dynamic load distribution within a session initiation protocol (“SIP”) network. As disclosed in the Abstract and in paragraphs [0001], [0011]-[0018], a SIP network is a network that provides interactive user sessions involving multimedia elements such as video, voice, chat, and gaming (paragraph [0011]), and is used to establish, modify, and terminate multimedia sessions and calls (paragraph [0013]). For a cited reference to anticipate a claim, all elements of the claim must be present in the reference. Applicant respectfully asserts that Jaiswal fails to teach or suggest all elements of Applicant’s claims. More specifically, while Jaiswal is directed to load balancing, the underlying architecture employed in Jaiswal renders it inapplicable to a multiprocessor system as recited in Applicant’s claims. In Jaiswal, a sender (e.g., an Internet radio station, or a calling telephone) initiates a session with one or more recipients. The sender has knowledge of the recipients before the session is initiated (e.g., by the recipient subscribing to a service), and a connection is made with that recipient. By way of example, assume an internet telephone call were being placed. In Jaiswal, the sender knows the recipient’s IP address by way of a SIP registration at some prior time, and can direct the call to the recipient. By contrast, in Applicant’s claimed invention, the processor receiving the “call”

(i.e., the computer-readable instructions) is not known in advance, since the processor selection is made based on priorities associated with the cluster to which the processor belongs, as well as the processor's own priority within the cluster. If Applicant's claimed invention were used in a SIP-based telephony system, the result would be that the telephone call would be routed to a random recipient based on whether that recipient was busy or not. Applicant respectfully asserts that Jaiswal is so far unrelated to Applicant's claimed invention that it completely fails to teach or suggest all elements of the claimed invention. Applicant therefore respectfully requests that the Examiner withdraw the rejection.

Applicant further respectfully asserts that Jaiswal teaches away from Applicant's claimed invention. As described above, Jaiswal is directed to a load balancing arrangement through which communications can be achieved between a sender and a recipient. Assuming, without admitting, that Jaiswal's system is analogous to Applicant's claimed invention, Jaiswal should properly be seen as requiring knowledge of both the sender and the recipient before submitting the packet for routing. That would be the equivalent, in Applicant's claimed invention, of knowing the processor to which the instructions should be sent before applying Applicant's claimed invention. This would render Applicant's claimed invention moot, and inherently teaches away from the claimed invention.

Still further, in the instant Office Action, the Examiner asserts that Applicant's undersigned representative's reliance on the fact "that the system has no knowledge of the recipient before taking action" is improper as this fact is not recited in Applicant's claims. While Applicant's undersigned representative concedes that this is not explicitly recited in the claims, it is respectfully suggested that this limitation is inherent and is the fundamental reason that a processor is being selected (i.e., because the processor with which the instructions will be associated is not known at the time). This is as opposed to Jaiswal, in which the destination is known beforehand (e.g., the recipient's phone number, or the destination IP address of the subscriber to an Internet radio station).

Applicant respectfully suggests that Jaiswal does not teach or suggest all elements of the claimed invention, and further that Jaiswal teaches away from the claimed invention. Applicant therefore respectfully requests that the Examiner withdraw the rejection.

**REJECTIONS UNDER 35 U.S.C. §103(a)**

Claims 1-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,105,053 to Kimmel et al. (“Kimmel”) in view of U.S. Patent No. 7,191,349 to Kaushik et al. (“Kaushik”). In rejecting the claims, the Examiner asserts that Kimmel teaches that a cluster is selected as a function of its load value, and that Kaushik discloses that the priorities of threads of the cluster is equal to the priority of the cluster. Applicant respectfully traverses. First, Applicant’s claimed invention does not require that the cluster priority be a function of the priority of the processors within the cluster. Therefore, the Examiner’s argument is fundamentally flawed, as the specific limitations recited in Applicant’s claims are not present in either Kaushik or Kimmel, or the combination thereof.

Furthermore, Applicant respectfully asserts that the Examiner’s combination of Kaushik and Kimmel is purely based on hindsight. The Examiner asserts that “Because clusters are the sum of processor, it would be obvious to one of ordinary skill in the art to deduce: [that the priorities of a cluster is a function of the priorities of threads in the cluster]”. Applicant respectfully suggests that the Examiner’s arguments supporting this assertion, which appear in paragraph 41 of the instant Office Action, are based purely on a selective culling of information from the references, and absent the motivation provided by Applicant’s invention, one skilled in the art would not make the logical leap that the Examiner makes in the Office Action. A patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. KSR Int’l Co. v. Teleflex, 127 S.Ct 1727, 1741 (2007). As former Chief Judge Markey of the Federal Circuit has stated, “virtually all inventions are ‘combinations’, and ... every invention is formed of ‘old elements’ .... Only God works from nothing. Man must work with old elements.” H.T. Markey, *Why Not the Statute?* 65 J. Pat. Off. Soc’y 331, 333-334 (1983). The factfinder should be aware of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. KSR Int’l Co. v. Teleflex, 127 S.Ct at 1742. In determining whether a claimed invention is an obvious combination of prior art references, it must be shown there is an apparent reason to combine the known elements in the fashion claimed. Id. at 1741. To facilitate review, this analysis should be made explicit. Id. The Examiner has not advanced a sufficient rationale as to why a person skilled in the art would have been motivated to combine Kaushik and Kimmel in the manner described in the present Office Action, other than that provided by the hindsight of Applicant’s

RESPONSE

Examiner: **ZHE, Meng Yao**

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patent application. In making the rejection, the Examiner has asserted that one of Applicant's points of novelty is obvious, without any substantiation for this assertion other than the Examiner's own beliefs. Applicant's undersigned representative respectfully requests that the Examiner provide a more detailed factual showing of the obviousness of the claimed invention (e.g., where the prior art teaches assigning a priority to both clusters and the processors within a each cluster), or that the Examiner withdraw the rejection.

**CONCLUSION**

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that the currently pending claims are in condition for allowance and Notice to that effect is respectfully solicited. Additional characteristics or arguments may exist that distinguish the claims over the prior art cited by the Examiner, and Applicants respectfully preserve their right to present these in the future, should they be necessary. In the event that the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is courteously requested to contact applicant's undersigned representative.

**AUTHORIZATION**

The Commissioner is authorized to charge any additional fees associated with this filing, and credit any overpayment, to Deposit Account No. 19-3790. If an extension of time is required, this should be considered a petition therefor. If the fees associated with a Request for Continued Examination are filed herewith, this should be considered a petition therefor.

Respectfully submitted,

/ James E. Goepel /

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